



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 71 of the Private Housing (Tenancies) Scotland Act 2016**

**Chamber Ref: FTS/HPC/EV/23/4069**

**Re: Property at 8 Bibby Place, Elgin, IV30 1AN (“the Property”)**

**Parties:**

**Mrs Diane Tandon, residing formerly at 30 reidhaven square, Keith, AB555AB and now residing at 1A Duff Street Keith AB55 5EA (“the Applicant”)**

**Mr Jason Johnson, 8 bibby place, Elgin, IV301AN (“the Respondent”)**

**Tribunal Members:**

**Andrew Cowan (Legal Member) and Helen Barclay (Ordinary Member)**

**Decision:**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for recovery and possession should be granted in favour of the Applicants.**

**Background**

1. This is an application, dated 6<sup>th</sup> November 2023, by the Applicant for an eviction order in relation to a Private Residential Tenancy (“PRT”) in terms of Section 71 of the Private Housing (Tenancies) Scotland (“the Act”) and rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Rules”).
2. The application relied upon a Notice to Leave dated 10<sup>th</sup> August 2023 in terms of section 50 of the *Private Housing (Tenancies) (Scotland) Act 2016*, served upon the Respondent by email on 10<sup>th</sup> August 2023. The Respondent had confirmed that he was content to receive that notice by email. The Notice relied upon Ground 1 of Schedule 3 Part 1 of the 2016 Act, being that “the landlord intends to sell”. The Notice to Leave intimated that an application to the Tribunal would not be made before 5<sup>th</sup> November 2023.

3. The application papers included a copy of a tenancy agreement between the Applicant and the Respondent. The Property was the subject of the agreement. The tenancy agreement commenced on 20<sup>th</sup> September 2020. The terms of the tenancy between the parties confirmed that the Respondent was liable for monthly rent of £800.
4. The application papers also included a copy of a letter to the Applicant from Grampian Property Centre dated 11<sup>th</sup> December 2023 showing that the Applicant had instructed Grampian Property Centre to proceed to market and sell the Property.
5. Evidence of a section 11 notice in terms of the *Homelessness Etc. (Scotland) Act 2003* served upon Moray Council on 14<sup>th</sup> November 2023 was included in the application papers.

## **The Hearing**

6. The matter called for a case management discussion (“CMD”) of the First-tier Tribunal for Scotland Housing and Property Chamber, conducted by remote telephone conference call, on 21<sup>st</sup> June 2024.
7. The Applicant joined the conference call and gave evidence to the tribunal.
8. The Respondent did not join the conference call. A copy of the application together with details as to how to join the CMD conference call had been served upon the Respondent by Sherriff Officers on 17<sup>th</sup> May 2024. The tribunal were satisfied that the Respondent was aware of the terms of the application and had been informed how to join the CMD call, In the circumstances the tribunal decided to continue with the CMD in the absence of the Respondent.
9. At the CMD, the Applicant explained that she had decided to sell the property as she did not consider that the ongoing rental of the property was financially viable. She wishes to realise the value of the property to allow her to provide further financial support for her and her family following their recent purchase of a new home in Keith. In addition, the terms of the Applicant’s mortgage over the Property fell to be reviewed by September 2024. The Applicant currently had a mortgage rate of around 2% and she expected this to increase to around 5% when the mortgage was renewed. She did not consider she could afford the new mortgage rate and wished to sell the property and discharge the current mortgage over the Property for these reasons. The Applicant has instructed Grampian Property Centre to sell the Property. The Applicant confirmed that the Respondent lives at the property with his partner and four children. The Applicant had been informed by the Respondent that he had applied to the local authority for rehousing. The local authority would not consider making an offer of rehousing until the tribunal had granted an order for eviction in relation to the current tenancy between the parties. The Applicant advised that she was informed by the Respondent that he was keen to move from the Property as soon as possible as the size of the Property was not suitable for the size of his

family. In all the circumstances the Applicant considered that it was reasonable for the eviction order to be granted. The Applicant accepted that, if an order for eviction was granted, it would be reasonable to delay enforcement of that order for a period of two months from the date of the tribunal's decision to allow the Respondent to identify alternative property and to remove from the Property.

## **Findings in Fact**

12. On 20<sup>th</sup> September 2020 the Applicant let the Property to the Respondent under a Private Residential Tenancy with commencement on that date ("the Tenancy").
13. Notice to Leave was emailed to the Respondent on 10<sup>th</sup> August 2023.
17. The Applicant raised proceedings for an order for eviction with the Tribunal, under Rule 109, relying in part on Ground 1 of Schedule 3 part 1 of the 2016 Act on or around 23<sup>rd</sup> June 2023.
18. A section 11 notice in the required terms of the *Homelessness Etc. (Scotland) Act 2003* was served upon North Lanarkshire council on the Applicant's behalf on 23<sup>rd</sup> June 2023.
20. The Applicant has instructed Grampian Property Centre to market and sell the Property.
21. The Applicant intends to sell the Property, and it is reasonable that an order for eviction is granted

## **Reasons for Decision**

23. The application was in terms of rule 109, being an order for eviction of a PRT. We were satisfied on the basis of the application and supporting papers that the Notice to Leave had been competently drafted and served upon the Respondent.
24. Ground 1 of Schedule 3 to the 2016 Act (as amended and applying to this application) applies if:
  - (1.)...the landlord intends to sell the let property.
  - (2.) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord –
    - a. is entitled to sell the let property,
    - b. Intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and
    - c. The tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.

- (2) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example) –
- (a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,
  - (b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.
25. The Applicant has engaged agents to sell the Property. She has entered into an agreement with Grampian Property Centre as to the terms and conditions of estate agency services in connection with the property. The Applicant wishes to sell the Property as she no longer considers that it is financially viable to let the Property. We were satisfied on the evidence that the Applicant has a genuine intention to sell the property and that Ground 1 of Schedule 3 to the 2016 Act had been established.
26. The Tribunal also considered it was reasonable to issue an eviction order.
- The Tribunal accept that the Applicant wishes to sell the Property as it is no longer financially viable for her to continue to let this property.
- The Respondent has not sought to oppose the Application.
- In all the circumstances the Tribunal are satisfied that it is reasonable to grant an order for eviction,
30. The Rules allow at rule 17(4) for a decision to be made at CMD as at a hearing before a full panel of the Tribunal. On the basis of the information presented by the Applicant, we are thus satisfied to grant an order for eviction at this time, but with the earliest date of eviction suspended until 21<sup>st</sup> August 2024.

## **Decision**

31. In all circumstances, we grant an order against the Respondent for eviction from the Property under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 further to ground 1 of Schedule 3 of that Act, suspended as stated above.

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Andrew Cowan

21<sup>st</sup> June 2024

Legal Member/Chair

Date